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Councilman Jeffery M. Bradshaw
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Re: Increasing Competition at Heber City Airport (36U)

Dear Councilman Bradshaw:

The Aircraft Owners and Pilots Association (AOPA) is deeply concerned over an alarming number of complaints we received regarding the egregious prices and fees of OK3 Air, the only fixed-based operator (FBO) at Heber City Airport (36U). AOPA is pleased the Heber City Council (Council), as owner and sponsor of 36U, has begun to address these reports by revising the 36U minimum standards and facilitating FBO competition. Today we urge the Council to take additional steps to increase competition and emphasize the Council's statutory obligations under the Federal Aviation Administration's (FAA) Airport Improvement Program (AIP). In particular, AOPA strongly recommends the Council:

- Ensure the revised 36U minimum standards allow interested parties to more easily compete over the provision of fuel and ramp services;
- Solicit proposals for the creation of a second FBO at 36U; and
- Provide, through the City itself, a self-service fueling facility if a second FBO cannot be secured.

Since 1986, under the FAA's AIP, the airport has received and benefited from over \$17 million in federal grant funds for development and improvements. In exchange for the public's investment of those funds, the Council obligated itself to certain assurances in the interest of protecting affordable access to a public-use airport. The Council agreed not to grant any "exclusive right," whether expressly or by implication, to a single FBO at the airport and to make 36U available to all types and classes of aeronautical users, including FBOs, on reasonable conditions. The Council also agreed to ensure each FBO charges reasonable and nondiscriminatory prices for its services.

As the Council is aware, Heber City Airport's fuel prices are among the highest in the region. AOPA has made it a priority to ensure the affordability of accessing local public-use airports by reducing excessive FBO pricing and fees. In our opinion, promoting and increasing fair FBO competition would strengthen the Council's ability to comply with its AIP assurances. While prices are currently established by a single incumbent FBO, an increase in competition

would better ensure more reasonable and competitive pricing and fees for all airport users, generate revenue for the airport and community of Heber City, and allow the public to fully realize the grant benefits 36U received from aeronautical users and taxpayers.

Heber City Airport's Lack of Competition

Heber City Airport is a public-use airport that provides convenient and essential access to Park City, Heber Valley, and the famous Sundance Film Festival. Despite the airport being substantially paid for and developed with taxpayer dollars, the Council has put its compliance with federal obligations in jeopardy by relinquishing to OK3 Air exclusive control over fuel services and transient access. The Council has not allowed for any competing self-serve fuel stations, nor does the airport offer any separate transient parking space aside from OK3 Air. In short, OK3 Air essentially controls access to the airport and, as a corollary, the communities in and around Heber City.

In past years, the Council has failed to facilitate competition for the provision of fuel services at 36U despite third party interest in establishing a second FBO. In the fall of 2015, North American Flight Services (NAFS), which operates an FBO in Saratoga County, New York, submitted a formal application to the Council, requesting a temporary lease to perform due diligence with intent to build an FBO. However, the Council's Airport Advisory Board (Advisory Board) rejected the application for being "too vague, and with too many unknowns." (Advisory Board Meeting Minutes, Oct. 21, 2015, at 4.) At the same meeting, the Advisory Board agreed to recommend that the Council instead consider whether to proceed with a request for proposal (RFP) in order to solicit and consider new applicants. (*Id.*)

Over the subsequent six months, the Council declined to issue a RFP for a second FBO, expressing concern that another FBO would result in two financially struggling FBOs. (City Council Meeting Minutes, Nov. 5, 2015 ("There was discussion about whether or not there was enough business activity to sustain more than one FBO and what correlation there is between a second FBO and additional air traffic."); Advisory Board Meeting Minutes, Jan. 20, 2016, at 5 ("[T]he City Council was looking from [sic] some due diligence by the Airport Board to determine whether it was in the best interest of the airport to look at a second FBO, to justify sending out an RFP, or could it create an environment with two struggling FBOs . . ."); City Council Meeting Minutes, Mar. 3, 2016, at 7.) Despite complaints over high fuel prices, the Council and its Advisory Board appeared unwilling to solicit for a second FBO because they were worried about the financial health of the incumbent. This deprived the airport and its users of the benefits from competition. While the Council has recently appeared more willing to entertain offers, to date, no RFP for a second FBO has been issued.

Airport User Complaints

As you are aware, the Heber City Airport has recently been accused of violating AIP grant assurances by users of the airport, including the FBO and aircraft operators. The group of based operators and tenants, informally known as the 36U Hangars and Tenants Group, filed a complaint with the FAA under 14 C.F.R. part 13, alleging a laundry list of wrongdoing against the airport staff and OK3 Air. In particular, the Council has allegedly failed to update or modify,

on repeated occasions, the airport’s minimum standards unless it secured the consent of OK3 Air. Such veto power would obviously allow the sole FBO to block any amendments conflicting with its interests. AOPA is encouraged that the Council’s attorney, in its response to the 36U Group, clarified the lease agreement does not provide such “veto” rights and has taken corrective action by issuing the airport’s *Public Discussion Draft* of revised minimum standards.

While revising such standards is necessary, AOPA is still very concerned over the airport’s high fuel prices, particularly in comparison to airports within a 50-mile radius. When possessing a monopoly over fuel services, most FBOs exercise self-discipline and charge reasonable and fair pricing; however, that does not appear to be the case here. Indeed, OK3 Air has openly indicated its fuel prices remain high for the *benefit* of the airport to ensure any lower fuel prices do not cause an increase in traffic and noise. (Advisory Board Meeting Minutes, Jan. 20, 2016, at 5 (“[OK3 Air owner] AbuHaidar expressed that Heber was a desirable resort destination, and we wouldn’t want Heber to be known as the cheap fuel source, because traffic would increase as well, and public complaints would result.”); City Council Meeting Minutes, Mar. 3, 2016, at 6.) OK3 Air’s pricing seems to reflect the FBO’s substantial control over the airport—with its monopoly power over fuel and ramp services—and vision for Heber City as an exclusive and expensive resort town.

Airport	Distance from 36U	100LL SS	100LL FS	Jet A FS
Heber City Municipal Airport (36U)	0	-	\$6.28	\$6.11
Provo Municipal Airport (PVU)	21 miles	-	\$5.91	\$5.00
Spanish Fork Airport (U77)	23 miles	\$4.97	-	\$3.69
South Valley Regional Airport (U42)	27 miles	\$5.00	\$5.00	\$3.95
Skypark Airport (BTF)	32 miles	\$4.49	\$4.75	\$3.39
Bolinder Field-Tooele Valley Airport (TVY)	43 miles	\$5.00	-	-
Ogden-Hinckley Airport (OGD)	50 miles	\$4.92	\$4.99	\$3.95

Source: AOPA Airport Directory, June 2017.

Council’s Grant Assurance Obligations

Exclusive Rights Prohibition. To protect and foster affordable access to communities like Heber City, Congress enumerated a series of written assurances that airport sponsors must agree to before receiving federal funding for development projects. (49 U.S.C. § 47107(a).) One of these assurances is that the airport will not grant an “exclusive right” to any person providing, or intending to provide, aeronautical services to the public.¹ (*Id.* §§ 40103(e), 47107(a)(4); Assurance 23.) These “aeronautical services” include services offered by an FBO, such as aircraft storage or fuel sales. (FAA Order 5190.6B, at 8-3, 314.) The primary intent of the provision is to promote fair competition at airports where federal funds have been expended. (*Id.* at 8-4.) An FBO holding a monopoly over certain aeronautical services can increase prices and deprive users of fully realizing developments paid for by taxpayers through the federal government.

¹ As an exception to the exclusive rights rule, public-use airport owners may exercise its proprietary right and be the sole provider of an aeronautical service. (FAA Order 5190.6B, at 8-10.)

An express agreement to grant an “exclusive right” to any person is not required for an airport to violate the exclusive rights provision. (FAA Advisory Circular (AC) 150/5190-6, at 8.) An airport can grant an exclusive right through the “imposition of unreasonable standards or requirements, or by any other means.” (*Id.*) In the case of 36U, AOPA understands the current minimum standards make it practically impossible to establish a self-service fuel station unless the provider is a full-service FBO providing a wide-range of aeronautical services. Unreasonable minimum standards, however, cannot be used to protect an exclusive right. If a prospective applicant wanted to simply offer self-serve fuel at the airport, and not all of the other services, applying any unreasonable requirement or standard to the applicant would be a constructive grant of an exclusive right. (*See City of Pompano Beach v. FAA*, 774 F.2d 1529, 1542 (11th Cir. 1985); FAA Order 5190.6B, at 10-2.)

Reasonable Conditions for Airport Access. A separate, but equally important, grant assurance is the airport’s binding commitment that the airport will be made available for public use on reasonable conditions and without unjust discrimination to all types and classes of aeronautical activity, including commercial activities offering services to the public. (49 U.S.C. §§ 47101(a)(9), (d), 47107(a)(1); Assurance 22(a).) Under this obligation, the Council must “negotiate in good faith and on reasonable terms with prospective aeronautical service providers” if adequate space at 36U is available. (FAA Order 5190.6B, at 9-9.) The Council does not have discretion in determining whether sufficient business activity exists to justify an additional FBO; the willingness of a prospective provider to lease space is deemed evidence as a public need for those services. (*Id.*) While demand, location, facility conditions, and similar factors may justify differing lease conditions or rates, the Council cannot deny access on those grounds.

While an airport may prohibit or impose limits on certain aeronautical uses to ensure the safe operation of the airport, any such restrictions must be reasonable and not discriminatory. (49 U.S.C. § 47107(a)(1); Assurance 22(h), (i).) An airport must reasonably accommodate an aeronautical activity if the activity could be safely conducted at the airport on less restrictive terms than the terms proposed by the airport sponsor. (FAA Order 5190.6B, at 14-5.) This would require the airport to remove or revise the prohibition or restriction for the airport to remain in compliance with the grant assurances. In this case, the Council cannot deny a prospective applicant access to the airport based upon its minimum standards when a revision of those requirements would accommodate the applicant and not interfere with the safe operation of 36U. (*Id.* at 14-6.)

Reasonable FBO Pricing. As a component of ensuring reasonable access, airports are obligated to ensure that FBOs are charging reasonable and not unjustly discriminatory prices for any services rendered to the public. (49 U.S.C. § 47107(a)(1); Assurance 22(b)(2).) This is even listed in Heber City Airport’s existing minimum standards adopted by the Council. (8/19/2010 Minimum Standards, ¶ 2.6.2) In the case of 36U, AOPA has received a substantial number of complaints over the high fuel prices and fees which are, frankly, grossly disproportionate to the services rendered. Moreover, fuel prices being artificially increased to deter access, as openly suggested by OK3 Air, could hardly be defended as “reasonable.” This is especially true when the grant assurance is a component of furthering reasonable airport access. AOPA knows that high prices from FBOs deter pilots and operators from flying into that airport. Protecting access to communities like Heber City is precisely why the FAA requires FBO pricing to be reasonable.

Recommendations to Promote FBO Competition

AOPA is encouraged by the Council's actions to improve management of the airport and promote competition for fuel services, including revising the minimum standards. To ensure and protect affordable access to the Heber City community, AOPA believes that additional actions by the Council to increase competition at 36U will address the unreasonably high fuel prices resulting from OK3 Air's monopoly power. More than one FBO or fuel provider would better ensure more reasonable and competitive pricing and fees for all airport users, and serve to keep the airport in compliance with its federal obligations. Accordingly, AOPA recommends the Council take the following actions:

1. **Ensure the revised 36U minimum standards allow interested parties to more easily compete over the provision of fuel and ramp services.** AOPA applauds the Council's efforts to revise the minimum standards, which will lay the necessary foundation for facilitating additional entrants into the airport. The Council should not hesitate to revisit and further revise the standards, as appropriate and without compromising safety, to facilitate access for a prospective FBO. AOPA also offers the following recommendations in response to questions raised in the *Public Discussion Draft*:
 - Ensure the leased premises requirements are reasonable and appropriate for entry of another FBO at the airport (Draft Standards, ¶ 5.4, 6.4);
 - Establish a separate category for a light general aviation FBO (LGA-FBO) if a party expresses interest to only service piston-engine aircraft and sell avgas (Draft Standards, ¶ 5.1, 6); and
 - Ensure a specialized aviation service operator (SASO), including the city itself, is capable of offering a stand-alone self-service fueling facility (Draft Standards, ¶ 5.10, 6.10).
2. **Solicit proposals for the establishment of a second FBO at the airport.** The continuously high fuel prices, along with NAFS' previously expressed intent to build an FBO, demonstrate the public need for these fuel and ramp services. A second FBO would introduce much needed competition to drive down prices and better ensure affordable access to the Heber City community.
3. **Establish airport-administered transient ramp space and a self-service fueling facility for avgas if a second FBO cannot be secured.** The Council can introduce competition over fuel services and ramp space parking by having the city itself offer an alternative to OK3 Air. The Council should establish alternative ramp space for transient operators and provide a stand-alone, self-service fueling facility. This would generate revenue for the city, and reduce fuel prices and other fees for transient and based operators at the airport.

AOPA appreciates the Council's consideration of our letter and applauds the actions taken so far to improve management of the airport. AOPA strongly urges the Council to secure a second fuel provider and encourage competition beyond revising the minimum standards. Doing so will promote a fair, competitive FBO environment at 36U, increase affordable access to the local community of Heber City for all users, and enable the Council to fulfill its grant obligations. AOPA stands ready, willing, and able to assist the Council and its Advisory Board to facilitate and encourage competition in any way possible.

Sincerely,



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